

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Eighteenth day of December Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice V. PARTHIBAN

CRIMINAL MISCELLANEOUS PETITION No.11071 of 2018

CRL.A.NO.502 OF 2018

VIJAYAKUMAR

[PETITIONER]

Vs

THE INSPECTOR OF POLICE
RASIPURAM POLICE STATION,
NAMAKKAL DISTRICT.
CR.NO.166 OF 2015.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.NO.502 OF 2018 on the file of the High Court, the High Court will be pleased to suspend the sentence passed by the Sessions Judge, Fast Track Mahila Court at Namakkal in Spl.C.C.No.44 of 2015 dated 27.07.2018 and to enlarge the petitioner on bail pending disposal of the present CRL.A.NO.502 OF 2018.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.NO.502 OF 2018 on the file of the High Court and upon hearing the arguments of MR.JAYA PRAKASH FOR M/S.S.SANKAR, Advocate for the petitioner and of M/S.V.SARATHA DEVI, GOVERNMENT ADVOCATE [CRL.SIDE] on behalf of the Respondent the court made the following order:-

The petitioner/appellant is the sole accused in Special C.C.No.44 of 2015, on the file of the Sessions Judge, (Fast Track Mahila) Court, Namakkal. By judgment dated 27.07.2017, the trial Court has convicted the appellant for offence under Section 363 of the Indian Penal Code; under Section 5(1) read with Section 6 of Protection of Children from Sexual Offences Act, 2012 ('POCSO Act' for brevity). The maximum punishment imposed upon the petitioner is 10 years Rigorous Imprisonment under the POCSO Act, with usual default clause. Hence, the petitioner seeks suspension of sentence.

2.The learned counsel for the petitioner/appellant pointed out that there are certain lacuna in the prosecution case while convicting the accused under the provisions of the POCSO Act and the petitioner/appellant was sentenced to undergo Rigorous Imprisonment for ten years. He would further submit that the petitioner is languishing in jail for the past five months. The learned counsel for the petitioner would also point out certain infirmities and holes in the case of the prosecution. He would also submit that the victim girl has not complained of any sexual assault at the hands of

the petitioner and the said fact has not been taken note of by the trial Court, while convicting the petitioner under the provisions of the POCSO Act. The petitioner has not committed any offence, as projected by the prosecution, is the contention raised by the learned counsel. There are material contradictions in the prosecution case and there are arguable points involved in the appeal. Therefore, the learned counsel prays for suspending the sentence.

3. In view of the fact that there are several infirmities in the prosecution case and there are arguable points involved in the appeal, as contended by learned counsel for the petitioner, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

4. Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioner is directed to be enlarged on bail on condition that he shall execute a bond for a sum of Rs.10,000/- [Rupees Ten Thousand only] with two sureties each for a like sum to the satisfaction of the learned Sessions Judge, Fast Track Mahila Court, Namakkal, and on further condition that the petitioner shall stay at Chennai and report before the V Metropolitan Magistrate, Egmore, Chennai, once in a week i.e. on every Monday at 10.30 a.m. pending disposal of the appeal.

-sd/-

18/12/2018

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE SESSIONS JUDGE,
FAST TRACK MAHILA COURT, NAMAKKAL.

2 THE V METROPOLITAN MAGISTRATE,
EGMORE, CHENNAI.

3 THE CHIEF METROPOLITAN
MAGISTRATE, EGMORE, CHENNAI.
[FOR INFORMATION]

4 THE INSPECTOR OF POLICE,
RASIPURAM POLICE STATION,
NAMAKKAL DISTRICT.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

6 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

+1C.C. to M/S.S.SANKAR Advocate on payment of necessary
charges in SR.NO. 24515

Order

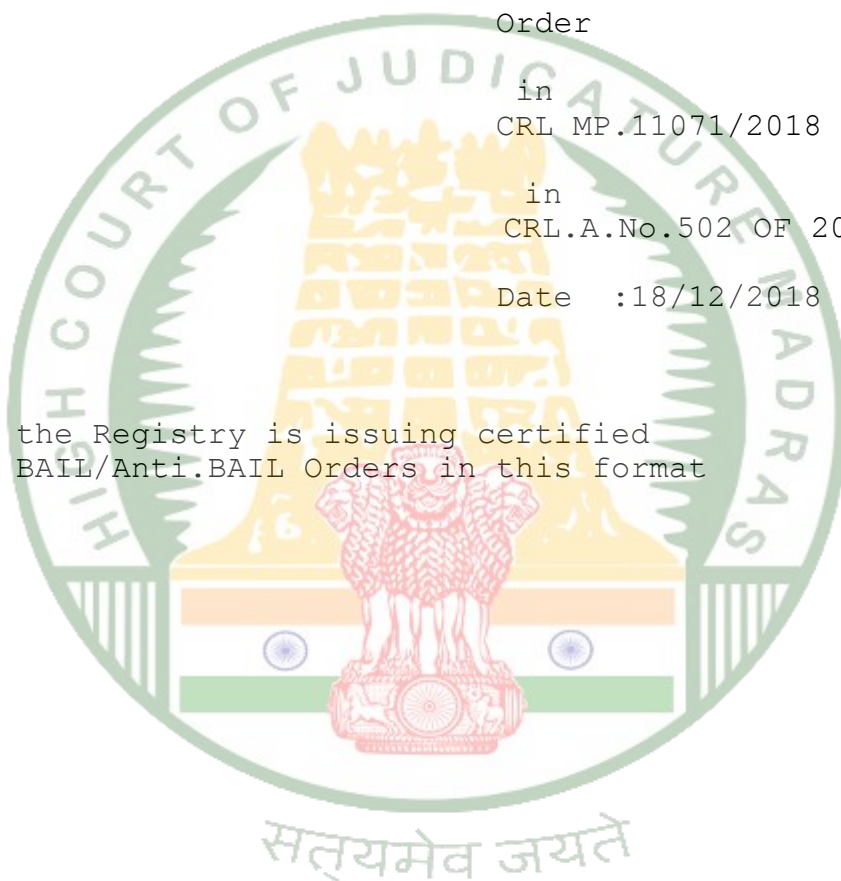
in
CRL MP.11071/2018

in
CRL.A.No.502 OF 2018

Date :18/12/2018

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MLT-28/12/2018



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